

## REMARKS

Applicant respectfully requests reconsideration of this application in view of the following remarks. For the Examiner's convenience and reference, Applicant's remarks are presented in substantially the same order in which the corresponding issues were raised in the Office Action.

### Status of the Claims

Claims 1-12 are pending. Claims 1-9 are currently amended. No claims are canceled. Claims 10-12 are added. No new matter has been added.

### Summary of the Office Action

Claim 1, stands objected to because of informalities. Claims 8 and 9 stand objected to under 37 CFR 1.75(c) as being in improper form.

Claim 2 stands rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as his invention.

Claims 1-4 and 7 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 6,467,233 to Maliszewski et al. (hereinafter "Maliszewski").

### Response to Objections

Claim 1 stands objected to because of informalities. In particular, the Office Action states that claim 1 line 8, the word "and" should be deleted. Applicant respectfully submits that claim 1 has been amended to remove the "and" on line 8. Applicant appreciates the Examiner's recommendation and respectfully requests that the objection to claim 1 be withdrawn.

Claims 8 and 9 stands objected to under 37 CFR 1.75(c) as being in improper form. In particular, the Office Action states that claims 8 and 9 are in improper form because they are dependent from multiple dependant claim 7. Applicant respectfully submits that claims 8 and 9 have been amended to not be multiple dependent claims. Applicant respectfully requests that the objection to claims 8 and 9 be withdrawn.

Response to Rejections under 35 U.S.C. § 112, second paragraph

The Office Action rejected claim 2 under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as his invention. Applicant respectfully submits that claim 2 has been amended to remove the parenthetical reference labels to the drawings. Accordingly, Applicant requests that the rejection of claim 12 under 35 U.S.C. § 112, second paragraph be withdrawn.

Response to Rejections under 35 U.S.C. § 103(a)

The Office Action rejected claims 1-4, and 7 under 35 U.S.C. § 103(a) as allegedly being unpatentable Maliszewski. Applicant respectfully requests withdrawal of these rejections because the cited reference fails to teach or suggest all of the limitations of the claims.

CLAIMS 1-12

Claim 1 stands rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Maliszewski. Applicant respectfully submits that claim 1 is patentable over the cited reference because the cited reference does not teach or suggest all of the limitations of the claim. Claim 1, as amended, recites:

A modular kit for a tower having a height ranging between a minimum height and a maximum height, in particular for a wind energy turbine, comprising:

    a first conical tower segment comprising a steel tube having a predetermined length,

    a second conical tower segment comprising a steel tube having a predetermined length, and

**a first variable-length cylindrical tower segment comprising a steel tube having a length that can be varied between a predetermined minimum length and a predetermined maximum length,**

    wherein the length of the first cylindrical tower segment can be adapted to the necessary height of the tower between its minimum height and its maximum height, the minimum height being the sum of the predetermined lengths of the first and second conical tower segments and the minimum length of the first cylindrical tower segment, and the maximum height being the sum of the predetermined lengths of the first and second conical tower segments and the maximum length of the first cylindrical tower segment. (Emphasis added).

Applicant respectfully submits that claim 1 has been amended to clarify pre-existing claim limitations, and in particular recites “a first variable-length cylindrical tower segment comprising a steel tube having a length that can be varied between a predetermined minimum length and a predetermined maximum length.” Applicant submits that the Applicant’s specification provides support for the amendments, for example, at page 2, line 30 to page 3, lines 3, page 6, lines 27-31, and page 7, lines 7-19.

Maliszewski is directed to a tower for a wind generator made up of a plurality of sections to which are affixed a plurality of transition rings. Maliszewski, Abstract. Maliszewski discloses that the tower of Maliszewski can range in height from 32 to over 80 meters. *Id.* at col. 2, lines 34-35. For the larger towers, such as those 60 to 80 meters in height, three sections are used, and for those over 80 meters, four sections are used. *Id.* at col. 3, lines 22-26. The Examiner alleges that the first bottom ring 22 of Figure 2 of Maliszewski satisfies the claimed first cylindrical tower segment, but indicates that Maliszewski fails to explicitly teach the first cylindrical tower segment has a length between a predetermined minimum length and a predetermined maximum. Office Action, mailed Oct. 20, 2008, pages 3-4, citing Maliszewski, element 22 of Figure 2. Applicant agrees that Maliszewski fails to explicitly teach the identified limitation. In addition, Applicant respectfully submits that the first bottom ring 22 of Figure 2 does not constitute “a first *variable-length cylindrical tower segment ... having a length that can be varied* between a predetermined minimum length and a predetermined maximum length,” as recited in amended claim 1.

Even though Maliszewski teaches that the tower can range in height from 32 to over 80 meters, nothing in Maliszewski teaches that the first bottom ring 22, or any other ring in the tower, is a variable-length segment that can be varied between a predetermined minimum length and a predetermined maximum length. Furthermore, it appears that Maliszewski teaches that the height of the tower can be changed by adding additional sections. In particular, Maliszewski teaches that for towers less than 60 meters, two sections are used, namely bottom section 12 and upper section 14. *Id.* at col. 2, lines 36-38, Figures 1-2. For towers between 60 to 80 meters, three sections are used, namely the bottom, upper, and middle sections (not illustrated), and for the towers over 80 meters,

four sections are used, namely the bottom and upper sections, and two additional sections. *Id.* at col. 3, lines 22-26. Maliszewski does not teach that these sections are varied in height, or that the rings are varied in height, but rather that the height of the tower is changed by adding additional sections. Thus, the first bottom ring 22, or the bottom sections are not variable-length sections that have a length that can be varied between different lengths. As such, Maliszewski fails to teach **“a first variable-length cylindrical tower segment comprising a steel tube having a length that can be varied between a predetermined minimum length and a predetermined maximum length,”** as recited in claim 1.

Given that the cited reference fails to teach or suggest all of the limitations of the claim, Applicant respectfully submits that claim 1 is patentable over the cited reference. Accordingly, Applicant requests that the rejection of claim 1 under 35 U.S.C. § 103(a) be withdrawn.

Given that claims 2-12 depend from independent claim 1, which is patentable over the cited reference, Applicant respectfully submits that dependent claims 2-12 are also patentable over the cited reference. Accordingly, Applicant requests that the rejection of claims 2-7 under 35 U.S.C. § 103(a) be withdrawn.

### CONCLUSION

It is respectfully submitted that in view of the amendments and remarks set forth herein, the rejections and objections have been overcome. If the Examiner believes a telephone interview would expedite the prosecution of this application, the Examiner is invited to contact Kevin Grange at (408) 720-8300.

If there are any additional charges, please charge them to Deposit Account No. 02-2666.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

Date: January 21, 2009

/Kevin O. Grange/

Kevin O. Grange

Reg. No. 60,793

Customer No. 08791  
1279 Oakmead Parkway  
Sunnyvale, CA 94085-4040  
(408) 720-8300